

Exhibit 69

Penge Deposition

Christina Penge

Pages: 32, 33, 80, 81, 82, 83, 103, 104, 131, 132, 135,
136, 137, 149, 176, 177, 188, 190, 200, 201, 203, 204,
205, 207, 208, 209, 210, 211, 212, 213, 226, 227, 229,
230, 231, 232, 236

Dated: January 27, 2021

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES JOSEPH FREITAG,	:
JR., as ADMINISTRATOR of	:
the ESTATE OF CHARLES	:
JOSEPH FREITAG, SR.,	:
Plaintiff	:
	: No. 2:19-cv-05750-JMG
VS	:
	:
BUCKS COUNTY; PRIMECARE	:
MEDICAL, INC.; STEPHAN	:
BRAUTIGAM, PMHNP;	:
JESSICA MAHONEY, PSY.D;	:
AVIA JAMES, LPC;	:
CHRISTINA PENGE, LPC;	:
JOHN DOES 1-10,	:
Defendants	:

ZOOM DEPOSITION OF CHRISTINA PENGE

DATE AND TIME: January 27, 2021, 9:07 a.m.

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1 Q. Okay. So the reason why we went
2 through all that is what I want to ask you is, at
3 any point did you learn what happened at that
4 meeting?

5 And I'm talking about back in 2018, not
6 recently in your discussions with your counsel.

7 MR. NINOSKY: Object to the form, but
8 you can answer.

9 THE WITNESS: Yes. Emily, who had gone
10 to that meeting, was our regional director.

11 BY MR. FEINBERG:

12 Q. Is that Scordellis?

13 A. Yes. I can't -- yes.

14 Q. S-c-o-r-d-e-l-l-i-s?

15 A. Yes. Discussed this meeting and
16 discussed any policy or procedure changes that were
17 discussed during that meeting.

18 Q. Okay. When you say Emily discussed
19 this meeting, what do you mean?

20 Was there a meeting that you had
21 privately with her or was that a group meeting?

22 A. That was a group meeting with the
23 mental health staff that didn't attend.

24 Q. When did the meeting take place?

25 A. I don't recall.

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1 Q. What did Emily tell you?

2 A. Um, that going forward, anybody with a
3 state sentence would be automatically put on a
4 Level 2 is what the outcome -- she just discussed
5 the outcome.

6 Q. Okay. And I understand what you've
7 said, but let me ask one or two follow-ups.

8 You may have already answered this, but
9 did Emily tell you the process or the reasoning for
10 why that conclusion was reached?

11 A. Yes. They said they just wanted to be
12 cautious and that they felt that was a better way
13 of being cautious about when people come back and
14 have a state sentence, which was -- I mean, that's
15 pretty much it.

16 It was just their way of kind of making
17 sure that there was a protective factor.

18 MR. NINOSKY: Jon, can you do me a
19 favor and just give me a continuing objection to
20 any questions about the mortality review, the
21 document or anything that came out of it?

22 I've already lodged this argument with
23 the Court, but I just want to preserve the
24 objection. Is that okay with you --

25 MR. FEINBERG: Yeah.

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1 five just to get a cup of coffee.

2 MR. FEINBERG: Yes. Let's take five
3 minutes. It's 10:27. Let's get back 10:32, 10:33.
4 (Recess taken from 10:28 a.m. until
5 10:35 a.m.)

6 BY MR. FEINBERG:

7 Q. We are back on the record now after a
8 short break.

9 Did you realize during the break that
10 any of your previous testimony was incorrect or
11 incomplete?

12 A. No.

13 Q. Okay. I want to ask you about just
14 some of the general rules that govern the way
15 you've practiced as a mental health clinician while
16 working at the Bucks County Correctional Facility.

17 Would you -- can I assume and am I
18 correct in assuming that your most important job
19 while working with patients was to protect the
20 health and safety of the patient?

21 A. Yes.

22 MR. NINOSKY: Object to the form.

23 BY MR. FEINBERG:

24 Q. Okay. That was the central role of
25 your job as a mental health clinician; is that

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1 correct?

2 MR. NINOSKY: Object to the form. You
3 can answer if you can.

4 THE WITNESS: There's multiple factors,
5 but that's one of them.

6 BY MR. FEINBERG:

7 Q. Okay. Well, is there anything that
8 would be more important than protecting the health
9 and safety of the person that you were seeing?

10 MR. NINOSKY: Object to the form.

11 THE WITNESS: I'd definitely say safety
12 is important, but I also have to take in all
13 different accounts and also what else was part of
14 my job as just being part of a staff.

15 BY MR. FEINBERG:

16 Q. Well, let me be more specific. I mean,
17 if you got an indication that a patient under your
18 care was a potential risk to harm him or herself,
19 that would be at the top of your priority list to
20 try to prevent that from happening; is that
21 correct?

22 MR. NINOSKY: Object to the form. You
23 can answer.

24 THE WITNESS: To screen for it and
25 determine safety level, yes.

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1 BY MR. FEINBERG:

2 Q. Okay. And I assume you strive to do
3 that in every encounter you have; is that correct?

4 A. Yes.

5 Q. So, in connection with the question I
6 asked just a minute ago, is it fair to assume that
7 anytime you have an indication that there's a risk
8 that someone could harm themselves, you're gonna do
9 something about it; is that right?

10 MR. NINOSKY: Object to the form,
11 because there's all kinds of risk factors, and just
12 because -- every person has a risk factor for
13 suicide, and simply having a risk factor doesn't
14 equate to being potentially suicidal or being
15 placed on some sort of a suicide level.

16 So I don't think she can answer that
17 question as phrased, Jon, because you can't equate
18 risk factor with suicidality on a one-to-one, and
19 everybody has the potential for suicidality so
20 everybody would be put under a formal level.

21 MR. FEINBERG: Maybe I didn't ask that
22 question the right way. Let me try it again.

23 MR. NINOSKY: And maybe I'm reading too
24 much into it. I apologize if I did.

25 BY MR. FEINBERG:

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1 Q. Would you agree, Ms. Penge, that if you
2 made the determination that someone was a risk to
3 harm themselves, you would do something about it?

4 A. Yes.

5 Q. In general, would you tend to err on
6 the side of caution if you had any questions about
7 a risk of suicide?

8 A. Yes. So I would screen them and make
9 sure that I'm screening for safety.

10 Q. Okay. So -- and maybe that's the
11 fundamental point, right?

12 If you have any questions and you
13 have -- about what level of concern you should
14 have, then you conduct a screening; is that
15 correct?

16 A. Yes.

17 Q. And is that screening the same type of
18 suicide risk assessment that we discussed right
19 before our break?

20 MR. NINOSKY: The form? You mean the
21 form?

22 MR. FEINBERG: Yes, that's what I meant
23 to say.

24 MR. NINOSKY: Okay.

25 THE WITNESS: Yes, I could -- yes, we

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1 those specific words to yourself. I'm just
2 describing a thought process.

3 Did anything like that thought process
4 occur to you?

5 MR. NINOSKY: Object to the form.

6 THE WITNESS: No. I've never been in a
7 jail prior to Bucks County, so I had no -- I had no
8 way of even comparing it to anything else.

9 BY MR. FEINBERG:

10 Q. Okay. So if I understand you
11 correctly, you assumed -- and am I understanding
12 you that you assumed that whatever was happening
13 there in terms of treatment planning was what was
14 supposed to happen?

15 A. Yes.

16 Q. All right. The second portion of the
17 text I asked you to read here, I'll just read this
18 into the record.

19 Patients may become suicidal at any
20 time during their incarceration. Suicidal behavior
21 is more likely at critical periods of time,
22 including commitment and the first several days
23 thereafter, court hearings, sentencing, and then
24 the sentence continues, but I'll stop there.

25 I take it that's consistent with your

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1 understanding?

2 A. Yes, those would be part of risk
3 factors.

4 Q. Okay. Do you know whether there were
5 any policies or procedures in place to address the,
6 quote, critical periods of time during the
7 incarceration?

8 MR. NINOSKY: Object to the form. You
9 can answer.

10 THE WITNESS: I mean, they would still
11 be screened like anything else.

12 There wasn't really anything
13 necessarily special, besides just taking into
14 account what was happening and talking with the
15 person or, like I said, an outside person, if they
16 had additional information, if they provided that,
17 taking that into account as well.

18 BY MR. FEINBERG:

19 Q. Okay. And I understand your answer,
20 but let me just give you a more specific set of
21 facts.

22 If a person has a trial coming up where
23 they're going to -- it's a jury trial and they
24 could be found not guilty or found guilty, is there
25 any kind of notification that you put into a chart

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1 you -- well, strike that. Let me ask that a
2 different way.

3 Did you ever learn during the course of
4 your treatment that his arrest was as a result or
5 connected with a suicide attempt?

6 MR. NINOSKY: Object to the form, but
7 you can answer.

8 THE WITNESS: From my understanding,
9 the arrest was related to property destruction and
10 not related to a suicide attempt.

11 BY MR. FEINBERG:

12 Q. Okay. And, again, I don't want to
13 split hairs here, but --

14 A. Okay.

15 Q. -- really what I'm trying to get at is
16 did you learn that he was locked up because of
17 something that happened at the same time of or in
18 connection with a suicide attempt?

19 MR. NINOSKY: Object to the form, but
20 you can answer.

21 THE WITNESS: Yes, I was aware of that
22 detail.

23 BY MR. FEINBERG:

24 Q. Okay. Did he mention that to you or is
25 that something that you just learned from another

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1 source?

2 A. He discussed that.

3 Q. Okay. When you say he discussed that,
4 I take it that's something that took place during
5 your clinical encounters?

6 A. Yeah, he mentioned why he was in jail.

7 Q. All right. Throughout the course of
8 Mr. Freitag's time in custody, I think you've
9 already mentioned he was on and off the various
10 precautions, Level 2, Level 3; is that correct?

11 A. Yes.

12 Q. This is a little tangential, but I want
13 to ask it now. I'm showing you what's been marked
14 as Exhibit P-4.

15 That text, is that text too small for
16 you to read, ma'am?

17 A. Yeah.

18 Q. I'm going to try to enlarge it. Do you
19 see up at the top here there's reference to the
20 Offender Management System?

21 A. I initially saw it, now I just see the
22 bottom of the screen.

23 Q. Oh, let me -- how about now? Can you
24 see it?

25 A. Hum-um.

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1 Q. Okay. We'll get to that. The reason I
2 asked the question now, though, is with this
3 document in front of us there's this ending officer
4 ID, 3581.

5 Do you have any idea what that is?

6 A. No.

7 Q. I'll put that away.

8 All right. We've talked a little bit
9 about Mr. Freitag expressing some anxiety about his
10 sentencing.

11 Was that -- how often did that come up
12 in your discussions with him?

13 A. Um, more so towards the actual
14 sentencing court date, not as much prior to that.

15 Q. All right. What do you remember him
16 saying, in general?

17 A. Um, he was just nervous about with the
18 restrictions he might have and how that would
19 affect his job. He kept on saying he was going on
20 probation.

21 Q. So he made clear to you -- strike that.

22 It was clear to you that his
23 expectation was that he was going to have a
24 noncustodial sentence; is that right?

25 A. Correct.

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1 Q. And to make sure we're talking about
2 the same thing, noncustodial means not in jail,
3 right?

4 A. Correct.

5 Q. Did he tell you the basis for that
6 expectation?

7 A. He told me that his lawyer said that
8 there was a higher likelihood that he was going to
9 go on probation. He might have mentioned once that
10 there was jail time, but for the most part our
11 conversations focused around probation.

12 Q. Did you have any reason to trust or
13 distrust the representations he was making about
14 the likelihood of his criminal consequences?

15 A. No.

16 Q. You mentioned that he was nervous about
17 the restrictions that would be placed on him
18 following his sentence.

19 Based on what you said about probation,
20 did you understand those -- are you describing
21 those as being restrictions connected with
22 probation?

23 A. Yes. He was just concerned how that
24 would affect his job. He had no idea what -- what
25 that -- you know, like, what that type of sentence

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1 would entail and how that would change the way in
2 which he had to go to work.

3 Q. In your practice -- strike that.

4 Do you remember ever cautioning him to
5 not get his hopes up about any specific result?

6 MR. NINOSKY: Object to the form. You
7 can answer.

8 THE WITNESS: Yeah, we have had that
9 discussion of what would happen if you were kind of
10 in that situation.

11 In the last conversation we had, he was
12 just, like, nope, we're sure that we're getting
13 probation and wasn't really listening about that
14 part. He wasn't worried about it.

15 He was a hundred percent sure, for the
16 most part, that he was gonna get probation.

17 BY MR. FEINBERG:

18 Q. Did that concern you?

19 MR. NINOSKY: Object to the form. You
20 may answer.

21 THE WITNESS: Given his demeanor, and
22 we hadn't gotten any other outside information to
23 the contrary, it did not concern me.

24 BY MR. FEINBERG:

25 Q. At any point, did it cross your mind

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1 long.

2 Q. Do you ever remember him mentioning
3 anything along the lines of the sentence that he
4 received, which was a -- for your benefit, I'll
5 represent to you it was a sentence of six to 12
6 years in prison, meaning a minimum. I mean that is
7 at least six years.

8 With that explanation, do you remember
9 him ever saying, boy, I could go to jail for at
10 least another six years?

11 A. No.

12 Q. Back to your memory of what he said and
13 what he was acknowledging as a possibility. If I'm
14 understanding you correctly, while he mentioned
15 possible jail time, by the time his sentencing came
16 around toward the end of August, was he convinced
17 or did he communicate that he was convinced he was
18 receiving probation?

19 A. Yes.

20 Q. And as you said, wasn't listening to
21 any suggestions of other possibilities; is that
22 right?

23 A. Right. He wasn't really soaking it in.
24 He heard me, but he just wasn't really factoring it
25 in.

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1 his job, whether or not he could return to his job.

2 BY MR. FEINBERG:

3 Q. Okay, great. And would you also agree
4 that based on the policies we've looked at,
5 including the PrimeCare policy, Exhibit 22, which
6 referenced how factors throughout the period of
7 incarceration, including the critical developments
8 in a criminal case, could also impact suicide risk,
9 that's something that I imagine would have been in
10 your mind, right, given the fact that Mr. Freitag
11 had concerns about, quote, his case?

12 MR. NINOSKY: Object to the form. Is
13 there a question there, Jon?

14 MR. FEINBERG: Yeah.

15 BY MR. FEINBERG:

16 Q. Is that something that was in your mind
17 from the moment you first learned about
18 Mr. Freitag?

19 MR. NINOSKY: That he was worried about
20 his case?

21 MR. FEINBERG: Yes.

22 MR. NINOSKY: Okay. You can answer if
23 you can.

24 THE WITNESS: Okay. Yeah. Really, the
25 focus was more on, like, the possibility of losing

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1 his job, so that was something that was a
2 discussion.

3 BY MR. FEINBERG:

4 Q. Okay. And it's -- you know, I suppose
5 we could try to isolate it, but did you understand
6 that his -- the loss of his job was tied directly
7 with the consequences from his criminal case?

8 A. In his perception, that's what I got
9 from him, yes.

10 Q. Okay. In other words, the reason he
11 would lose his job is because he was convicted of a
12 felony and could be placed on probation, which
13 would have prevented him from going to work, right?

14 A. Right, there's a possibility that he
15 discussed with us, yeah.

16 Q. Okay. All right. So then let's talk
17 about your first encounter with Mr. Freitag, which
18 is on, as we said, June 11th.

19 Your note goes over two pages here.
20 I'm going to shrink it down a little bit so
21 hopefully you can see it all at once.

22 Can you see that text already? All
23 right?

24 A. Yeah.

25 Q. Okay. For the record, bottom of Page

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1 Or that there was an appointment
2 scheduled; is that correct?

3 A. Yes.

4 Q. And now we see August 27th, three days
5 after the date of sentencing, that's when the
6 appointment was scheduled; is that right?

7 A. Correct.

8 Q. And is it -- based on some other
9 testimony you gave, is it my -- is it correct that
10 the appointment was scheduled for the Monday after
11 the Friday sentencing, because no one would be
12 present in the facility over the weekend?

13 A. Correct.

14 Q. Okay. And was that always the case in
15 your time with PrimeCare, that someone who had an
16 event on Friday where there may be a need for
17 mental health evaluation after, if it happened on a
18 Friday, the appointment would be scheduled for a
19 Monday?

20 A. Typically. It would only be if they
21 came in, back from the -- like, with the afternoon
22 group, but that was rare.

23 Most people, they left for court early
24 in the morning; they didn't come back till, like,
25 5:00 at night, 5:30.

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1 Q. Who was typically Dr. Cassidy; is that
2 correct?

3 A. (Nods head up and down.)

4 Q. Okay. I'm not sure I heard an answer.

5 Was it --

6 A. Yes, correct.

7 Q. All right, thank you. Skip that.

8 Oh, actually, I'll show you one other
9 thing just in connection with what we were looking
10 at.

11 Acknowledging, once again, this is not
12 your encounter, this is Ms. Mahoney's encounter on
13 June 15th, there's text that's not highlighted here
14 at the bottom of Page 111 that says, he discussed
15 wanting MH, mental health, to FU after he goes to
16 court in August, mental health to follow up.

17 Piecing that together, the appointment
18 that we saw scheduled for August 27th, that appears
19 to arise out of this encounter; is that right?

20 A. Correct.

21 Q. My question for you is, do you remember
22 Mr. Freitag saying to you at any point throughout
23 his time there that he wanted to see someone after
24 sentencing?

25 A. No. However, when he got to that last

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1 How did you reach that determination?

2 A. He was pretty verbal in that
3 conversation and very expressive, and in reading
4 the note that he had previously said, he actually
5 made statements that he thought he needed the Level
6 3.

7 So I didn't see that he was a risk
8 factor in necessarily hurting himself, just more of
9 a kind of concern than anything.

10 Q. Now, part of the Level 3 watch is not
11 just observations, but also regular mental health
12 check-ins; is that correct?

13 A. Correct.

14 Q. My understanding is that three times
15 per week would be the rule under Level 3?

16 A. Yes.

17 Q. Monday, Wednesday, Friday. Was that
18 the typical practice?

19 A. Correct.

20 Q. Okay. So when Mr. Freitag made that
21 expression to Ms. James, and as you understood it
22 when you saw him on August 6th, did you view that
23 as him feeling like he needed to have a sounding
24 board from a mental health professional?

25 A. Yes.

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1 Q. Do you remember -- it's not noted here,
2 but do you remember any discussion of Mr. Freitag's
3 concerns about his criminal case, meaning his
4 upcoming sentencing, in this encounter?

5 A. No. My recall is that he was just
6 frustrated about the cell. That was the most
7 prominent, that he was more agitated coming in with
8 than anything. And given his demeanor, as you
9 can see, I didn't take him off Level 3. I kept him
10 on.

11 Q. Now, your next encounter with
12 Mr. Freitag was on August 10th, which would have
13 been, I imagine that -- that's a Friday. Because
14 you're seeing him on Monday, the 6th. You see him
15 again on Friday, the 10th.

16 The intervening encounter was with
17 Ms. Mahoney on August 8th, and that is here at Page
18 120, at the top of this page.

19 I assume you would have reviewed this
20 when you saw Mr. Freitag on August 10th; is that
21 correct?

22 A. Correct.

23 Q. You see the note here stating,
24 according to Ms. Mahoney, he shared that he has bad
25 anxiety and that it seems to be increasing as his

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1 court date gets closer. Patient shared that he
2 worries about what is going to happen and how this
3 is going to affect his life once he is out.

4 MR. NINOSKY: Object to the form in
5 that you are reading accurately highlighted
6 portions, but not the subjective component in its
7 entirety, but go ahead.

8 MR. FEINBERG: I'll note that.

9 BY MR. FEINBERG:

10 Q. My question for Ms. Penge -- my
11 question for you, Ms. Penge, is this: Do you
12 remember when you saw him on August 10th seeing
13 that note and thinking, okay, well, this is
14 something that we're going to have to continue to
15 address?

16 A. Well, it is probably something I
17 brought up to see how he's doing on it, but also in
18 her note she had put the statement that he was to
19 see psychiatry to -- about his medication, so -- so
20 it affected that piece then, too.

21 Q. Now, my -- it does not look like he saw
22 psychiatry until August 15th, about a week later.
23 So let's -- we can come to that, but let's talk
24 next about your appointment with Mr. Freitag on
25 August 10th.

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1 Why don't you take a minute to read
2 that note, and then I'll ask you a few questions
3 about it.

4 A. Okay.

5 Q. It looks, here at the top in the
6 subjective portion, where you note that he is
7 sharing about anxiety related to the upcoming court
8 date; is that correct?

9 A. Yes.

10 Q. All right. And by the way, it says
11 trial.

12 I understand that you're not an
13 attorney and not a criminal defense practitioner,
14 but did you at that time understand the distinction
15 between a trial and a sentencing?

16 A. No, I do. I'm wondering if that was a
17 statement he might have made and I used that
18 terminology in there.

19 Q. Okay, all right. What do you remember
20 him saying about the upcoming court date that he
21 had for August 24th?

22 A. Again, it was about, okay, if I go on
23 probation, what would happen to my job? Like,
24 would I keep my job?

25 Because at that point there wasn't any

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1 word back yet about whether or not he still had his
2 job in place. So that -- I recall that was -- that
3 tended to be like an over-encompassing worry about
4 it.

5 It wasn't really about the sentencing.
6 It was mainly about his -- about his job.

7 Q. Okay. You note again that he had
8 limited insight and judgment.

9 What about this encounter led you to
10 draw that conclusion?

11 A. It's related to the anxiety, that he
12 just had limited understanding of, like, you know,
13 we can't make assumptions ahead of time. That's
14 not -- you know, you have to kind of take one day
15 at a time, and how can we control what we can't
16 control, things of that nature.

17 Q. Okay. So if I'm understanding you
18 correctly, that limited insight and judgment, was
19 that connected to his -- the statements he made
20 about what would happen to his job in relation to
21 his criminal case?

22 A. Right. So just discussing what can we
23 control and what can't we control in this
24 situation, in this present moment, and his
25 immediate inability just to kind of work that out

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1 with a second.

2 Q. All right. In other words, he -- to
3 make sure I understand the specifics, he's telling
4 you, I'm concerned about all these things that are
5 going to happen, you know, as a consequence of my
6 criminal case. I might lose my job.

7 And it sounds like you were counseling
8 him to say -- to realize, look, that's beyond your
9 control at this point. There's lawyers involved,
10 there's a judge involved and so on.

11 Is that -- again, not putting words in
12 your mouth, but that is an accurate summary of
13 the -- of the conversation?

14 A. Yeah, pretty much, yeah.

15 Q. And when you note that he had limited
16 insight and judgment, is that you saying that he
17 had a hard time comprehending the advice that you
18 were giving him about how to address that anxiety?

19 A. Right. So right in that moment as
20 we're having that conversation, he had a hard time
21 kind of comprehending what helps manage all that.

22 Q. All right. And that's consistent with
23 what you had seen prior; is that correct?

24 A. Yes.

25 Q. And consistent with what you saw moving

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1 on, as we'll get to in your notes in just a minute;
2 is that correct?

3 A. It may have been. I'd have to look at
4 the context.

5 Q. Okay. And we'll look through the next
6 notes.

7 As a matter of fact, let's go right to
8 the next encounter, which was August 14th.

9 So that would have been the Monday --
10 or actually, no, I'm sorry. If the 10th is a
11 Friday, you are seeing him then on a Tuesday.

12 Do you have any idea why there was not
13 a Monday encounter?

14 A. Um, it may have -- it may have been due
15 to just the amount of people we had to see on the
16 Level 3, especially over the weekends, because the
17 weekends, like you said, there's no mental health
18 provider.

19 So if -- if anybody was assigned a
20 Level 3 by either correctional officers or
21 correctional counselors or medical had people put
22 on Level 2 or anything like that, they tended to be
23 seen first, and then we would check in to make sure
24 nobody else needed to be seen right that second if
25 there was a great concern about them.

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1 But I don't know the circumstances on
2 that specific date, why we had a delay.

3 Q. Okay. Take a moment to read your note
4 from August 14th, then I'll ask you some questions.

5 A. Okay.

6 Q. The indication here, he got more of a
7 confirmation that his job will be available, what
8 does that mean?

9 A. From what I recall, I believe a lawyer
10 called him, either his lawyer or he got ahold of
11 his postmaster, and he was told he was able to keep
12 his job.

13 From what I recall, he was going to
14 have EAP for mental health services, and they had a
15 more plan employees for when he is released.

16 Q. I'm sorry. What does EAP mean?

17 A. Employment assistance program for --
18 they can -- you can call in and he can get
19 counselors or addiction treatment or medical help.

20 They're kind of almost like a case
21 manager or -- which is provided by the work plan.

22 Q. You made the determination once again,
23 at the top of Page 119, client had limited insight
24 and judgment.

25 I'll ask you the same question I've

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1 asked you before. What factors caused you to reach
2 that conclusion here?

3 A. For this specific moment, it probably
4 was still just making sure we're talking about what
5 he can and can't control.

6 A lot of times in jails that typically
7 ends up being the reason for limited insight and
8 judgment is because they are in jail.

9 So I can't specifically recall the
10 whole conversation. I remember that specific
11 piece, but he still was having that kind of just
12 being able to, like, focus on what can he control
13 right in this instance and, you know, what can't we
14 control from the outside and how we handle that.

15 And he had previous therapy, so we've
16 always talked with him about the coping skills, and
17 he as able to discuss that.

18 Q. Okay. One quick note about the
19 encounter with the psychiatrist, which was
20 Mr. Brautigam.

21 That takes place here on August 15th,
22 and we're on Page 118. Is that correct?

23 A. Yes.

24 Q. All right. And there's a note here,
25 understanding again that you did not participate in

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1 this encounter, that Mr. Freitag told Mr. Brautigam
2 that he, Mr. Freitag, had court on August 24th and
3 was hoping for release.

4 I assume that was consistent with what
5 he had been telling you, right?

6 A. Yes.

7 Q. There's also a note that his affect was
8 anxious and a diagnosis of unspecified depression.

9 Do you see that?

10 A. Yes.

11 Q. I take it you would have been aware of
12 those findings when you saw Mr. Freitag again on
13 August 17th, which would have been the Friday that
14 week, as we see here on Pages 117 and 118; is that
15 correct?

16 A. Correct.

17 Q. All right. And it looks like your
18 finding here is consistent with what Mr. Brautigam
19 wrote, that Mr. Freitag was anxious awaiting
20 sentencing; is that right?

21 A. Yes.

22 Q. What do you remember about him saying
23 about the sentencing?

24 A. More that he's smiling. He was
25 interactive that day. He just said he was anxious

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1 because he was very happy about his family being
2 there and that he was just anxious just to get it
3 completed. He just wanted it done so that he could
4 move on.

5 Q. Do you remember him expressing any
6 anxiety about the specific outcome of the hearing?

7 A. That specific one, no, I don't remember
8 him talking about that. I think it was more about,
9 like, just getting through the court date and being
10 able to come out on the other end.

11 Q. Okay. Now, there's yet again a finding
12 of limited insight and judgment. All right?

13 What factors led you to reach that
14 conclusion?

15 A. The self-forgiveness, just
16 remembering -- he just struggled with like -- he
17 did discuss, like, I created a mess, which he was
18 more open about.

19 But just being able to say, like,
20 being -- having him able to take time and focus on,
21 you know, how do we forgive ourselves and move
22 forward and using our coping skills.

23 Q. You removed him, at the conclusion of
24 this appointment, from Level 3 status; is that
25 right?

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1 A. Right, um-hmm.

2 Q. Why did you do that?

3 A. He was in a better mood. He had just
4 seen medical -- I mean psychiatry.

5 He had -- he had talked about improved
6 mood, so I removed him because there was less of
7 the mood from before and less symptoms presenting.

8 Q. Okay. Now, at that point, he had spent
9 the better part of three weeks expressing anxiety
10 while on Level 3 status, expressing anxiety about
11 his upcoming court date; is that right?

12 A. Yes.

13 Q. And that court date was, at that point,
14 just a week away; is that right?

15 A. Correct.

16 Q. And throughout that time -- in fact,
17 throughout the previous two-and-a-half months, you
18 had noted that he had limited insight; is that
19 correct?

20 A. Yes.

21 Q. And throughout that time you had noted
22 that he had limited judgment; is that correct?

23 A. Yes.

24 Q. And he was -- throughout that time was
25 anxious about the hearing; is that right?

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1 MR. NINOSKY: Object to the form.

2 BY MR. FEINBERG:

3 Q. Is that right?

4 A. Yes.

5 Q. And, in fact, there had been changes
6 back and forth throughout that time of his
7 depressive mood; is that correct?

8 A. There was at least one. Yeah, there
9 was at least one change in that, yes.

10 Q. All of those factors during that time
11 period could be considered or are considered risk
12 factors for suicide, are they not?

13 MR. NINOSKY: Object to the form.

14 THE WITNESS: They could be, given a
15 change in demeanor and interactions. He didn't --
16 the protective factors were more inclined on this
17 day than the previous days.

18 BY MR. FEINBERG:

19 Q. When you decided to remove him from
20 Level 3 status, did you consult with anyone about
21 that decision?

22 A. Not that I recall. I don't recall
23 talking to anybody to consult about changing it.

24 We often when we remove people, we tell
25 our coworkers that we've removed them so that we

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1 can keep it like -- you know, so that everyone is
2 on the same page. That's pretty much it.

3 Q. I'm sorry. Were you finished with your
4 answer?

5 A. Yes.

6 Q. Do you remember that happening at all
7 in these circumstances?

8 A. I talked to my coworkers pretty
9 regularly. I probably did they will them. I can't
10 recall this specific day.

11 Q. Do you have -- did you have any
12 concerns about Mr. Freitag at this point, a week
13 out from his sentencing, which he had been
14 expressing anxiety about?

15 MR. NINOSKY: Object to the form.

16 THE WITNESS: No, I had no concerns,
17 because we were gonna follow up with him as -- as
18 indicated for our Level 3. So we were going to see
19 him pretty much three days the following week.

20 BY MR. FEINBERG:

21 Q. Was there any cost to keeping him on?
22 When I say cost, I'm not talking about
23 financially. I'm just talking about, you know, in
24 terms of harm to him or any inefficiencies for
25 mental health providers.

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1 Q. All right. What do you remember him
2 saying specifically to cause you to write that?

3 A. He just said he was just nervous about
4 the court date, about the sentencing.

5 We dis -- again we discussed like what
6 he had to say in, what would he do.

7 We reviewed that we did have him in for
8 an appointment Monday. We discussed that, that
9 he -- and that we were a support and that he could
10 call us any time or send a sick call or ask
11 officers.

12 We always -- that always would be the
13 best, because we could always ask the officer if
14 this was an emergency.

15 But I just remembered him just wanting
16 to get to the trial -- get through the sentencing
17 and get that done.

18 Q. Before I ask you further questions,
19 there's a note here at the bottom. It says,
20 entered by Christina Penge, LPC, at staff request.

21 What does that phrase at staff request
22 mean?

23 A. I have no idea.

24 Q. Okay. You made a finding yet again
25 that he has limited insight; is that correct?

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1 A. Yes.

2 Q. You made a finding once again that he
3 had limited judgment; is that right?

4 A. Yeah.

5 Q. And that's the -- I think the fifth
6 time that you've made that specific finding.

7 What was it about the way he presented
8 himself that caused you to make that conclusion?

9 A. Just contextual, just his nervousness.
10 Just hyper-focused on the trial. I mean not the
11 trial, I'm sorry, the sentencing.

12 I can't fully -- I can remember him
13 smiling and being engaged, but there wasn't
14 anything specific per se, just to -- kind of his
15 hyper-focused-ness and him being more focused on
16 the sentencing.

17 That's pretty much it.

18 Q. And, yes, to tie this into something we
19 talked about at the very beginning of the
20 deposition, was his limited insight and judgment
21 also connected to his expectations that he was
22 getting out of jail?

23 A. Yes.

24 Q. All right. So you made this specific
25 finding that this is someone who is not -- he was

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1 can answer.

2 THE WITNESS: He appeared to just be
3 happy and excited to hopefully get his job back and
4 to get done.

5 Like I said, I don't think he was
6 fully -- he seemed to not fully grasp that he could
7 return, although he was acknowledging that he would
8 be coming back to see us.

9 BY MR. FEINBERG:

10 Q. All right. That he could not grasp
11 that he would return to the jail; is that correct?

12 A. Correct.

13 Q. All right. So, to make sure I
14 understand, I think what you're saying is that he
15 did not grasp that he might have to serve more time
16 in jail; is that right?

17 A. He understood it. He just wasn't -- I
18 don't know how else to explain it. But he
19 understood that there was a possibility.

20 Q. Right.

21 A. But he wasn't fully, like, allowing
22 himself to, I guess, believe that.

23 Q. Okay. And the word that comes to mind
24 the way I'm listening to you talk is acknowledge.

25 He was not acknowledging that as a

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1 possibility; is that correct?

2 A. Sort of, yes.

3 Q. And did that concern you about him,
4 going into sentencing?

5 A. No, because we had that discussion
6 about if you return, you know, that we're going to
7 see you no matter what, that the staff is here. If
8 we're not here, that you can contact anybody, and
9 somebody will be able to see you or, you know, help
10 you, because medical staff is still there on the
11 weekend.

12 So, no matter what, we did have that
13 discussion about the availability of, you know,
14 PrimeCare to help him if he needed help.

15 Q. Okay. Now, just to summarize, he's
16 been telling you for two months he's anxious about
17 sentencing, right?

18 A. Yes.

19 Q. You've had an understanding from a
20 clinical judgment and also based on common sense,
21 based on your exposure to the criminal justice
22 system that he might be overly optimistic about his
23 chances; is that correct?

24 A. I had -- at the time, I had no idea. I
25 didn't -- I don't have any understanding of

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1 sentencing.

2 I understand that there's a possibility
3 that, hey, he could get, you know, more time in
4 jail. But I didn't know any -- I had no other
5 concept of --

6 Q. Okay. And perhaps I misstated it. I'm
7 not trying to --

8 A. Okay.

9 Q. -- suggest anything here.

10 But to make sure I understand your
11 position, from your understanding, he was
12 singularly focused on his expectation of getting
13 out; is that correct?

14 A. Right.

15 MR. NINOSKY: Object to the form.

16 THE WITNESS: And --

17 BY MR. FEINBERG:

18 Q. All right. You also knew at that point
19 his history of having multiple prior suicide
20 attempts, right?

21 A. Correct.

22 Q. Did it ever cross your mind that
23 whatever happened in that courtroom could just be
24 absolutely devastating for him?

25 MR. NINOSKY: Object to the form. You

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1 can answer.

2 THE WITNESS: At that moment, no. My
3 belief, he reported talking to his lawyer and that
4 he was going to get on probation, and that I didn't
5 have any inkling to the contrary.

6 So I did not -- in fact, his lawyers
7 have called us in the past to let us know that they
8 were concerned about somebody, and our director
9 would have that preemptively kind of known in case
10 she needed to be on the lookout.

11 So we never got any type of information
12 besides what was provided.

13 BY MR. FEINBERG:

14 Q. Is there any reason you didn't do a
15 suicide risk assessment at this point?

16 A. He made no statements. His demeanor
17 was pleasant and interactive. He was able to
18 express himself sufficiently.

19 There was no -- at the time, there was
20 nothing that anybody had reported from the block or
21 anywhere else that would object to keeping him off
22 of Level 3. There was no concern at that time.

23 Q. Is there any reason you didn't do a
24 mental status exam?

25 A. The mental status is in the objective.

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1 to him that there's a range of possibilities and he
2 should be prepared for that range of possibilities;
3 is that correct?

4 A. Correct.

5 Q. And what he was having difficulty
6 acknowledging, which was -- was that range of
7 possibilities; is that correct?

8 A. Correct.

9 Q. And that over the course of your
10 interactions with him throughout August of 2017,
11 that's what led you to conclude on multiple
12 occasions that he had limited insight and judgment;
13 is that correct?

14 A. Correct.

15 Q. Okay, thank you.

16 In terms of policy changes that
17 occurred since Mr. Freitag's death, we discussed
18 what happened as a result of the mortality review
19 process, that inmates coming back with state
20 sentences were placed on Level 2 status.

21 You remember that testimony?

22 A. Yes.

23 Q. Are you aware of any other changes that
24 were made to protocols concerning -- or protocols
25 that we've discussed following Mr. Freitag's death?